

McBride

May 7, 1998

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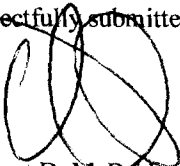
Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, D.C. 20554

Re: WT Docket No. 97-82
Amendment of the Commission's Rules
Regarding Installment Payment Financing
For Personal Communications Services (PCS) Licensees

Dear Secretary:

I Vincent D. McBride pursuant to Section 1.429(h) of the Commission's rules, 47 C.F.R. 1.429(H) (1996) enclose an original and (11) copies of my comments in referenced to the above. Please kindly date-stamp the Original for filing with your office. You may direct any questions concerning this matter to the undersigned.

Respectfully submitted,



Vincent D. McBride

Enclosures

CC: Honorable William E. Kennard
Honorable Susan Ness
Honorable Harold W. Furchgott- Roth
Honorable Michael K. Powell
Honorable Gloria Tristani
Ari Fitzgerald, Esquire
David R. Siddall, Esquire
Kevin Martin Esquire
Peter A. Tenhula, Esquire
Karen Gulick, Esquire
Daniel Phythyon, Esquire
Rosalind Allen, Esquire
Kathleen O'Brien Ham, Esquire
Jerome Fowlkes, Esquire
Sandra Daner, Esquire

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C**

In the Matter of

WT Docket No. 97-82

Amendment of the Commission's Rules
Regarding Installment Payment
Financing for Personal Communications
Services (PCS) Licensees

To: The Commission

**COMMENTS AND PETITION FOR RECONSIDERATION ON THE
COMMISSION'S ORDER ON RECONSIDERATION OF THE SECOND REPORT
AND ORDER**

I, Vincent D. McBride, pursuant to Section 1.429 (f) of the Commission's rules, 47 C.F.R. 1.429(f) (1996) and Public Notice, DA 98-741 released April 17, 1998, hereby submit my comments and petition for reconsideration with respect to the above-captioned proceedings adopted March 23, 1998 and Released March 24, 1998.

Vincent D. McBride files these comments to urge the commission to reconsider the above order, based on the April 24, 1998 ruling of Federal Bankruptcy Court Judge Steven A. Felsenthal. Who has determined that "reasonably equivalent value" was not exchanged when the FCC granted 14 Entrepreneur's C-Block PCS licenses to General Wireless, Inc. The Bankruptcy court has revalued GWI licenses at \$166 million. This is an 85% discount to GWI's net bid, a value on par with the D, E, & F Block auctions which each sold for 400% less than the Entrepreneur's C Block auction. This discount is similar to the amount that the Commission is willing to give to bankrupt Pocket Communication creditors, which has a total bid of \$1.5 Billion on 43 licenses. This ruling is selective, and favors only the largest players in the Entrepreneur's C Block Auction and again discriminates against the smallest players whose needs have been constantly ignored by the Commission.

The outcome of this ruling is most likely going to effect NextWave Personal Telecommunications Inc. who bid a total of \$4.2 Billion for 56 licenses. The bankruptcy option may well be the preferred direction, which NextWave may now consider as an obligation to its shareholders.

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The Commission has been consistently unwilling to support the truly small bidders in the Entrepreneur's C Block auction. I'm talking about the small companies and individuals who each hold only one license and 13 small companies who hold two licenses each.

Though this group represents over **HALF** of the total number of winning bidders, all together account for less than 1.75% of the total net bids made in the Entrepreneur's C Block auction.
(See enclosure list of 43 C Block Companies)

It is now clear that the Entrepreneur's C Block auction total net bids of \$10 Billion was over-inflated by as much as 400% and was done so primarily by the bidding procedures of only four companies. These four companies alone account for over 70% of the total net bids:

- BDPCS, who bid \$873 Million never had the first 5% down payment and blames loss of its licenses on US West Inc.
- POCKET COMMUNICATIONS, whose creditors are Ericsson and Siemens, has filed for bankruptcy, and are asking the FCC for a 50% discount on the Dallas & Chicago markets with NO penalties.
- GWI PCS Inc. with backing from Hyundai filed for bankruptcy, and Federal Judge Steven A. Felsenthal has discounted its net bids of over \$1 Billion by 85% with no penalty on its down payment.
- NEXTWAVE TELECOM INC. who, despite the official ruling by the FCC which found NextWave to be over the foreign ownership rules, by as much as 100% granted 56 licenses to NextWave with total disregard to the legitimate small bidders participating in the Entrepreneur's C Block auction. For the FCC to now claim that it cannot modify the so-called "integrity of the rules" is absurd because the FCC has changed the rules constantly to accommodate the large players.

The Commission's order on reconsideration of the Entrepreneur's C Block states it was essential to ensure fair and impartial treatment for all auction participants. This includes unsuccessful bidders like U.S. Air Waves Inc. who's up front deposit of \$81 Million is equivalent to the total net bids of the 30 smallest players together. The C Block auction was actually partial, prejudicial and discriminatory from the very start in more ways than one. Let's get real \$500 Million is not what I call a small business by any meaning of the word. The SBA who's business is determining the boundaries of a small business, and has been doing so for the last 40 years has long decided a small business was a business with \$ 6 Million in assets or less. Yet the FCC had set the qualifications of a small business at 50 times that amount. The FCC ruling regarding this matter was based, in part on the idea that a large amount of capital was needed in order to compete in the Telecommunications business. This kind of ruling is very subjective. You can find thousands of company's all over the globe that

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started out in business with no more than \$500, which are today American, icons. Just who was World Comm?

Allowing NextWave Telecom Inc. into the C Block auction with the backing of South Korean companies, some of them owned in part, by the South Korean Government. This is the same South Korean Government that the IMF (backed and supported by the US Government) just bailed out to the tune of \$100 Billion. The FCC had full knowledge of NextWave and its violation of the foreign ownership rules. Antigone Communications L.P., Devco Inc, National Telecom Inc, publicly reported this to the Commission. Also with a letter dated March 12, 1996 from the President of GO Communications, Steve Zecola, to then Chairman Reed Hundt which urged the Commission to investigate "illegitimate bidders" who were causing the rapid rise in marketplace values. In spite of these protestations, the Commission made the choice to disregard these warnings. And now would like to preserve the "integrity" of the auction by imposing a 100% penalty on the down payments of the 43 small Entrepreneur's C Block winners who are being coerced into accepting the Amnesty option.

In light of the Federal Bankruptcy Court ruling on the GWI licenses it would be very unfair for the Commission to ask the 43 truly small auction winners to help pay for the \$700 Million plus discount to GWI. The option the commission is willing to give us includes a **ZERO** reduction to our net bids and a **100%** penalty on our down payments. Even if all 43 small bidders are to forfeit 100% of our down payments the total would only come to \$17.5 million and a re-auction of the 43 licenses would take up to a year. The prices at re-auction could be as low as 10 cents on the \$1.00 or as little as \$1.00 a license if the WCS or LMDS auctions are to repeat, and then the five year build out clock would start all over again. This would prevent any real competition in the small markets all across America for which the 43 smallest players have won. Towns like Williston ND. Population 13,000 - would not see new digital service until year 2005, if ever. It is no big secret in the wireless industry that the big A and B block players will not build out the small markets for some years down the road simply because of the build-out cost and the length of time to see any real return on their investment. The longer they wait, the less it will cost to build out the small markets.

I believe this would be against the Commission's main goals of promoting competition and encouraging Designated Entities to participate in the wireless telecommunications industry. This is a bold slap in the face to all participating small players in the Entrepreneur's C Block auction, as well as a breach of the Commission's objective and its statutory mandate from Congress under Section 309(j) of the Telecommunications Act. The Commission has an absolute responsibility to ensure the integrity of the Telecommunications Act, and to make good on the fundamental principles of the Entrepreneur's C Block Auction, and to fulfill what Congress had envisioned back in 1993. It would be a great blunder for the commission to now look the other way.

The "Options" which the Commission is offering to the small bidders are useless. Because we have only one market, any combination of desegregation and prepayment is not a choice, nor is any other cocktail solution the Commission has come up with. The "Options" are unfair and

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biased treatment to the small Entrepreneur's C Block bidders. Additionally, no matter what extension of time the Commission is providing - 30 days, 60 days, or 30 years - we are holding licenses that are over-valued by as much as 85% and in some cases have no value at all! For the commission to suggest that by offering a 30-day extension of time will assist license holders to complete their fund-raising efforts is ludicrous. To make matters worse, you just added a 5% late payment fee to boot.

Apparently the opposition to additional payment choices was proposed by AT&T - hardly a neutral observer! I do not question the right of AT&T to file an opposition, but I do question the impact it may have had on the Commission. As for the fairness to other applicants who might have bid differently under more relaxed payment terms, there is a case to be made that the small bidders in the Entrepreneur's C Block auction may have bid considerably differently. If we had known that the top four bidders were going renege on their obligations, that the FCC was not going to uphold the foreign ownership rules and that the Commission planned to suspend all installment payments for one year. I could have bid \$1 Billion for the New York market. Apparently the larger the obligation, the less it means to the FCC as you merrily change the rules as you go along.

The Commission further explained that licensees selecting "Amnesty" would benefit substantially by avoiding being declared in default and thereby being freed from assessments of delinquencies. One has to ask if the licensees could seek the same from bankruptcy.

Your so-called "concern" for the taxpayer is a misnomer and a politically driven deceit. How can the same FCC who was granted a mandate by Congress in 1993 to auction the "American air waves" to the small businesses of America rationalize given away \$50 Billion in HDTV licenses to companies like General Electric, Westinghouse, and Walt Disney who own NBC, CBS, and ABC? Where was your concern for the "tax payer" in that decision? At best your decisions seem arbitrary, at worse they seem to favor those in position of power and money - the really big players. Again, the little guy - in spite of congressional mandate - is the real loser.

FOR CONSIDERATION:

- The June 8, 1998 Election Date to decide on the present options, must be delayed until after the decisions of the courts regarding the status of the bankruptcy of GWI and Pocket Communications In addition, this Election Date must come after the Commission's decision on the interest rate.
- 100% return of all down payments, plus back interest at 7% to date, is a must for any company choosing the Amnesty Option.

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- The interest rate must be the same for all Entrepreneurs' C Block licenses. The interest must be based on the day the C Block auction ended (May 7, 1996) and based on the ten-year U.S. Treasury note auction held on February 15, 1996. Which was 5.75% at the time.
- Stay all payments on all Entrepreneur's C Block licenses until all pending matters are settled.
- Stop all appeals to the GWI bankruptcy decision, and match all new values set by the courts to all Entrepreneurs' C Block licenses. Why is the FCC determined to IMPEDE a ruling that favors a small business?
- Eliminating the unjust enrichment payment rules, along with the transfer of control rules THIS COULD ONLY HELP.
- Modify the five-year build out rule to ten years.
- Immediately implement the Telecommunication Development Fund today.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Vincent D. McBride', with a stylized, looping design.

Vincent D. McBride

Vincent D. McBride
2655 30th Street Suite 203
Santa Monica Ca 90405

Tel: 310-452-4003
Fax: 310-396-0048

May 5, 1998

ENCLOSURE LIST OF 43 SMALL C BLOCK COMPANY'S

	# MARKETS
CELLUTECH	1
COMTEL PCS	1
FAMS AND ASSOC.	1
GEORGIA INDEPENDENT PCS	1
GLOBAL INFORMATION TECHNOLOGIES INC.	1
GUEST MARK M	1
INDUS INC	1
INTEGRATED COMMUNICATIONS GROUP	2
LONGSTREET COMMUNICATIONS INTERNATIONAL INC.	1
LORALEN CORP.	1
MBO WIRELESS INC.	1
*MCBRIDE VINCENT D.	1
MFRI INC.	1
MICCOM ASSOCIATES LTD.	2
NATIONAL TELECOM HOLDINGS INC.	1
NATIONAL TELECOM PCS INC.	1
NEW WAVE PCS INC.	1
NORTH DAKOTA PCS LP	2
NOVERR PUBLISHING INC.	2
PCS MOBILE AMERICA INC.	1
PCS ONE	1
PCSOUTH INC.	1
POKA LAMBRO/PVT WIRELESS LP.	2
PVT WIRELESS LP.	1
RESERVE TELEPHONE COMPANY INC.	2
RFW INC.	1
RLV-PCS 1 PARTNERSHIP	2
ROSAS INC.	2
RT COMMUNICATIONS INC.	1
SAVANNAH INDEPENDENT PCS CORP.	2
SOUTHERN COMMUNICATIONS SYSTEMS INC.	1
SOUTHERN WIRELESS LP.	1
SOUTHWEST MINNESOTA PCS LP	1
SOWEGA WIRELESS COMMUNICATIONS LP	1
THIRD KENTUCKY CELLULAR CORP.	1
TWS LLC	1
VIRGINIA PCS ALLIANCE CONSORTIUM	2
WINDKEEPER COMMUNICATIONS INC.	1
WIRELESS TELECOMMUNICATIONS CO.	1
BROOKINGS MUNICIPAL UTILITIES	2
CENTRAL ALABAMA PARTNERSHIP LP 132	2
KMTEL LLC	1
WESTERN MINNESOTA PCS LP	2
TOTAL NO. OF C BLOCK MARKETS	43

ADDENDUM

I, the undersigned and also a C-Block License holder, basically agree to the points made by Vincent D. McBride in the enclosed Commentary to the FCC dated May 5, 1998.

Name William H. Rappaport

Company Name National Telecom Holding, Inc.

Street Address PO Box 127

City Tiburon

State CA

Zip Code 94920

Phone Number 415-435-4591 x200

Fax Number 415-435-2633

BTA(s) 130 - ENID. OK

Signature William H. Rappaport

Date: 5/6/98

ADDENDUM

I, the undersigned and also a C-Block License holder, basically agree to the points made by Vincent D. McBride in the enclosed Commentary to the FCC dated May 5, 1998.

Name Chee Tsai

Company Name Longstreet Communication International

Street Address 77 Longstreet Rd.

City Holmdel

State New Jersey

Zip Code 07733

Phone Number (732) 834-0562

Fax Number (732) 834-0589

BTA(s) 012

Signature Chee Tsai

Date: 5/6/98

ADDENDUM

I, the undersigned and also a C-Block License holder, basically agree to the points made by Vincent D. McBride in the enclosed Commentary to the FCC dated May 5, 1998.

Name Jack E. Robinson

Company Name National Telecom PCS, Inc.

Street Address 2187 Atlantic Street

City Stamford

State CT

Zip Code 06902

Phone Number 203-425-4100

Fax Number 203-425-4105

BTA(s) American Samoa (8492)

Signature 

Date: 5/6/98

ADDENDUM

I, the undersigned and also a C-Block License holder, basically agree to the points made by Vincent D. McBride in the enclosed Commentary to the FCC dated May 5, 1998.

Name TEROME VIGIL

Company Name LORALEN CORP.

Street Address 72 PROVIDENCE ST.

City HYDE PARK

State MA

Zip Code 02136

Phone Number (617) 361-4750

Fax Number (617) 364-3233

BTA(s) 221 JUNEAU-KETCHIKAN, ALASKA

Signature 

Date: 5/5/98

FROM : Me

PHONE NO. :

May. 05 1997 03:34PM P6

ADDENDUM

I, the undersigned and also a C-Block License holder, basically agree to the points made by Vincent D. McBride in the enclosed Commentary to the FCC dated May 5, 1998.

Name MIA LavinkCompany Name CELLUTECHStreet Address 403 30TH Street N.W.City Washington, DCState Zip Code 20007Phone Number 202-333-8863Fax Number 202-333-8872BTA(s) 114 CSignature [Signature]Date: May 6-98